

**Local Union No. 697, International Brotherhood of  
Electrical Workers (UE & C Catalytic, Inc.)  
and Lawrence E. Brown. Case 13-CB-14092**

August 23, 1995

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS COHEN  
AND TRUESDALE

On November 14, 1994, Administrative Law Judge Robert A. Giannasi issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions and to adopt the recommended Order.

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Local Union No. 697, International Brotherhood of Electrical Workers, Chicago, Illinois, its officers, agents, and representatives, shall take the action set forth in the Order.

<sup>1</sup> In finding that the Respondent's efforts to cause the travelers to quit their jobs were coercive, Member Truesdale relies in particular on the Respondent's repeated statement to the travelers that the Respondent would not renew the credentials it had issued to the travelers authorizing them to work in its jurisdiction. Under these circumstances, Member Truesdale finds that this case is distinguishable from his dissent in *Sachs Electric Co.*, 248 NLRB 669, 670 fn. 4 (1980).

The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In adopting the judge's findings, we note that the parties have stipulated that "[i]n late May 1993, Respondent informed travelers that working credentials were being eliminated." In light of this stipulation and the record as a whole, we find that Union Business Manager Daugherty made this statement to the travelers on May 28, 1994. Notwithstanding this clarification of the May 28 meeting, we agree with the judge that, under all the circumstances, Daugherty's statements to the travelers and the Respondent's prior solicitation of travelers to quit their jobs were coercive.

*Paul Hitterman, Esq.*, for the General Counsel.  
*Paul T. Berkowitz, Esq.*, of Chicago, Illinois, for the Respondent.

**DECISION**

**STATEMENT OF THE CASE**

ROBERT A. GIANNASI, Administrative Law Judge. This case was tried on June 29 and August 15, 1994, in Chicago, Illinois. The complaint, as amended, alleges that Respondent violated Section 8(b)(1)(A) of the Act by threatening employees with loss of employment because they were not members of Respondent, and by telling employees that they should quit their jobs because they were not members, and that they would never gain membership in Respondent. It also alleges that Respondent violated Section 8(b)(2) and (1)(A) by causing employees to lose work opportunities because they were not members of Respondent, requesting that UE & C Catalytic, Inc. (the Employer) discharge employee Lawrence E. Brown because he was not a member, and by instructing employees to submit vacation requests to the Employer because they were not members. The Respondent filed an answer denying the essential allegations in the complaint. The parties submitted posthearing briefs that I have read and considered.

Based on the entire record, including the testimony of the witnesses and my observation of their demeanor, I make the following

**FINDINGS OF FACT**

**I. JURISDICTIONAL MATTERS**

Respondent is a labor organization within the meaning of Section 2(5) of the Act.

It is stipulated that the Employer, a corporation with an office and place of business located in Whiting, Indiana, is engaged in the building and construction industry. It is also stipulated, during a representative 1-year period, the Employer purchased and received at its Whiting, Indiana location goods valued in excess of \$50,000 directly from points outside of Indiana. Accordingly, I find that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

**II. THE ALLEGED UNFAIR LABOR PRACTICES**

**A. The Facts**

The Employer is signatory to a national agreement with Respondent's International Union, the International Brotherhood of Electrical Workers (IBEW), and a local agreement with Respondent. The latter provides for the hiring of electricians under an exclusive hiring hall maintained by Respondent. The hiring hall rules set forth four different hiring groups based on experience and certification in the electrical trade and place of residence. Respondent referred both its own members and members of other locals of the International, called travelers, to the Employer's jobsite at the Amoco Refinery in Whiting, Indiana, in late 1992 and early 1993.<sup>1</sup>

<sup>1</sup> As of May 28, 1993, the following travelers were employed at the Amoco jobsite:

Anthony Underly, Cleo Montgomery, Dave Purkal, F. Sherland, G. Callahan, Gary Kohler, J. A. Meyer, Jack Futrell, John Hendrix, Jack Sturken, L. E. Peterson, L. L. Jiminez, M.

*Continued*

The travelers are referred after signing a book at the hiring hall that is separate from that signed by members. They are issued a working permit or credential at the time of referral and it is renewed monthly. At the Amoco site, the Respondent's steward distributed the renewed credential each month. The credential lists the travelers' name, employer, and number and classification, together with Respondent's name and address. It also contained a space for issuance and expiration dates and the signature of Respondent's business manager. It stated as follows: "Bearer has complied with all requirements of [Respondent] and is entitled to working privileges under its jurisdiction. This credential can be revoked at the option of [Respondent]."

It does not appear that the working credential has any contractual basis. As Union Steward Richard Schutkovske testified, "if the traveling brothers have their dues paid . . . they are just automatically given their credentials." It is clear from the record in this case, however, that the travelers viewed the working credential as a prerequisite for working on a job to which they were referred, and the Respondent treated the credential in the same way. In addition, a number of witnesses in this case testified that there was an "unwritten rule" or tradition among employees referred by Respondent that travelers would leave a job to make way for local union members who might be out of work. It is also understood by travelers and members alike, at the end of a construction job in this trade, a layoff is preferable to a quit because the employee may collect unemployment compensation benefits if he is laid off.

In late May 1993 the Amoco job was close to completion. Some of the employees were told that the job would end in about 2 weeks and that half of the travelers would be laid off at the end of the following week and the remainder 2 weeks later. The travelers thus expected a layoff in the near future.

On Monday, May 24, 1993, Union Steward Schutkovske spoke to traveler Lawrence Brown. He told Brown that Respondent was not going to renew the travelers' working credentials for the month of June and that Respondent was looking for volunteers to be laid off. Brown agreed to volunteer for layoff and he did so in a subsequent conversation with the Employer's general foreman, Ray Suchanuk, who is himself a member of Respondent.

On Wednesday, May 26, 1993, Schutkovske told Brown that the Employer would not lay people off before the end of the job. He said that the only thing Brown could do, because Respondent was not going to renew the travelers' credentials, was to quit. Brown heatedly insisted that he would not quit because, if he did, he would not be eligible for unemployment benefits. Schutkovske responded that he was "just delivering a message from the hall."

The next day, May 27, Brown discussed the matter with Suchanuk, who said that because the job was nearing completion perhaps the Employer would lay off the travelers if they submitted vacation request forms. Brown agreed to submit such a form, which he completed and submitted to Schutkovske.

On the morning of Friday, May 28, 1994, the travelers on the job were asked to attend a meeting at which Schutkovske spoke. Some 20 to 25 travelers were in attendance. Schutkovske told the travelers essentially what he had told Brown in previous conversations set forth above. He said that their working credentials would not be renewed. He did not say why they would not be renewed; indeed, according to uncontradicted testimony, he himself was not told by Respondent's officials why the working credentials were not being renewed. Schutkovske then suggested that the travelers submit vacation request forms to the Employer so that they might be laid off. Schutkovske also stated that there were approximately 90 local people out of work. The evidence shows independently that Respondent was very much concerned that the travelers were in effect taking work away from local members who were out of work. Business Manager Mike Daugherty was involved in an internal election campaign for his position in which the issue was given prominence. Daugherty also wrote letters to the membership in which he highlighted the availability of jobs and the prospect of travelers leaving existing jobs.

All the travelers filled out the vacation forms, except for Brown, who had already done so the day before. The forms were submitted first to Schutkovske and then to the Employer. There is no evidence that members working on the jobsite submitted such forms. At the Friday morning meeting someone asked what would happen if the Employer did not accept the vacation forms. Schutkovske replied, "the only thing you can do is just take a voluntary quit" and the Employer would not contest unemployment applications. In response to the question, "what if they did contest it," Schutkovske said that the travelers would not get unemployment.

Later that day, after lunch, at another meeting of the travelers with both Schutkovske and Suchanuk, the latter said that there was nothing further that could be done. The Employer was not going to lay off the travelers, even with the vacation requests, and Respondent was not going to renew their working credentials. Suchanuk also said that anyone who wanted to remove his tools from the jobsite that evening could get a pass from him.

That same day, the travelers decided to schedule a meeting with Business Manager Mike Daugherty at the jobsite, prior to the beginning of the next workday, Tuesday, June 1, 1993, at 7:15 a.m. It was decided, if Daugherty did not meet with them at this time, they would report for work at 7:30 a.m. Later, on Friday, the travelers were notified that Daugherty would meet with them that evening after work.<sup>2</sup>

<sup>2</sup> The above is based primarily on the essentially mutually corroborative testimony of Terry Nelson, who was designated the spokesperson for the travelers, and Brown, who filed the charges in this case. Their testimony was detailed and candid; it was also plausible and consistent with the objective evidence in this case. I do not credit the testimony of Gary Kohler, who suggested that he and other travelers voluntarily decided "it was time . . . to go" because there were "local men on the book." I found his testimony implausible and influenced by what was obviously a fear of offending the Union that offered him job opportunities. The testimony of another traveler, Jack Sturkin, was not as detailed as the credited testimony, and it was influenced, I believe, by his pretrial interview in the presence of Daugherty, whom he wanted to please. In any event, Sturkin actually buttressed some of the credited testimony when he agreed that

Graykowski, M. D. Haselberger, N. G. DeClouette, P. F. Meer, R. Bogoian, R. E. Potter, R. E. Woodruff, R. J. Shank, Roger Fredenburg, R. S. Uryga, Sr., R. S. Foldenauer, S. E. Roberts, Scott Terry, Terry Nelson, T. W. Hunt, W. A. Casper, and Lawrence E. Brown.

The travelers met with Daugherty at the union hall about 4:30 p.m., on Friday, May 28, 1993. Daugherty confirmed that he was "not renewing June permits." He also mentioned that he had local people out of work. The travelers asked what would happen to them because they were not getting their permits renewed and the Employer would not lay them off. Daugherty simply said that he was not renewing their permits. He also told them that he could not stop them from going to work. He adhered to this position even though he was told that the job was nearing completion and all the travelers would be laid off in a few weeks.<sup>3</sup>

someone stated, at the Friday meeting, that there were "quite a few men on the book at the time." He also confirmed that the travelers were concerned "whether we were going to get our working credentials and whether we were going to keep on working." I do not credit Schutkovske's testimony concerning the onsite meetings. He testified that he was told by his superiors that the working credentials were not being renewed but was not told why. He testified that he transmitted this information to the travelers, although he says that he also told them that they did not need the credentials to continue working, as he was informed by Daugherty. He did concede, however, that the travelers, including particularly Brown, were concerned about whether they could continue working even after he transmitted this information to them. It is obvious to me that this concern was because the working credentials were still perceived to be a prerequisite for working and Schutkovske did not disabuse the travelers of this perception. He gave no reason for the nonrenewal of the credentials. In these circumstances, I find it unlikely that the travelers were told that they could work without credentials. Contrary to Schutkovske's testimony, the emphasis was on the nonrenewal of credentials and the fact that local members were out of work.

<sup>3</sup>The above is based on the credible testimony of Terry Nelson. He impressed me as the most reliable witness on this aspect of the case. Although some of the other witnesses to this meeting, including Daugherty, supported Nelson's account, I do not credit those witnesses to the extent that their testimony differs from that of Nelson. All seemed to shade their testimony in favor of the kind of concerted volunteer action that I found implausible in the circumstances of this case. For example, Daugherty conceded that he mentioned that local members were out of work. I reject his testimony that Nelson raised the subject by asking a question about the local members being out of work. Daugherty testified that Nelson asked him if he was telling the travelers not to go to work and that he responded that they should go to work. This is revealing because Nelson could only have asked that question if he was given the impression from Daugherty's unexplained refusal to renew the working credentials that Respondent did not want the travelers to go to work. Thus, Daugherty's grudging concession that he told the travelers that they could go to work was masked in his emphasis that they should not, or, indeed, from the standpoint of one who was refusing to renew work permits, could not. Nelson captured the real message when he testified, credibly in my view, that Daugherty said he could not stop the travelers from going to work. Indeed, Schutkovske's testimony, although not as detailed as Nelson's, and therefore less reliable, actually supported Nelson's. He testified that Daugherty said that the travelers "were welcome to go back."

Daugherty's insistence that he would not renew the work credentials together with his refusal to explain why and his statements about local people being out of work created a calculated ambiguity that carried the intended message that the travelers should not go back to work. It is clear from all of the circumstances that the travelers picked up the intended message that the Respondent did not want them to go back to work. Daugherty's acknowledgement of the travelers' right to go back to work was mere lip service that did not mitigate the contrary intended message. To the extent that Sturkin and Kohler supported the testimony of Daugherty and Schutkovske, I reject their testimony not only for the same reasons as I rejected

After June 1, 1993, the travelers assigned to work at the Amoco jobsite for the Employer ceased working or did not report for work. According to traveler Terry Nelson, he and other travelers did not report to work for the Employer at the Amoco site because they were denied work permits by the Respondent. I believe this testimony, which was echoed by Brown, who did not report to work on Tuesday, June 1, or Wednesday, June 2, because he did not have working credentials. As he testified, "[t]he problem was we couldn't go to work and we couldn't go sign an out-of-work list, and we couldn't sign up for Unemployment." Brown called Daugherty that day and asked him about the "work situation" and the "working credentials." Daugherty was not really responsive. He asked Brown what he wanted to do and Brown said he wanted to go to work.<sup>4</sup>

Brown also talked to the Employer's electrical superintendent, John Nahra, about his situation. Nahra confirmed that the Employer was not going to lay off the travelers and that he was unable to resolve their problem, which Brown described as a "Catch 22." In the end Brown told Nahra that he was not coming back on the job until he received working credentials from Respondent. Brown also called officials of the International Union and its district affiliate in an effort to resolve the problem. He eventually filed charges with the Board on June 4 and 21, 1993.

It is clear that the Employer wanted the travelers to return to work. Nahra called Nelson on Thursday, June 3, and told him that the travelers' work situation had been "straightened out" with the International Union. He wanted the travelers to report to work the next day, Friday, June 4. Nahra also told Nelson either that day or the next that he needed some 11 or 12 people back to work.

At the Employer's request, Daugherty sent letters, dated June 3, 1993, to all travelers who had not reported to work at the Amoco site. The letter stated as follows: "It was brought to my attention June 3, 1993 at 11:45 a.m. that we have not been going to work. Our position in this matter is that we must man the work that you have been assigned. Please report to work at U E & C Catalytic, Amoco project in Whiting, as soon as possible."

A few travelers, including Brown, reported to work after receiving Daugherty's letter. Most continued to fail to report to work, however, and were terminated as voluntary quits or for absenteeism. The Employer also laid off employees at various times between June 1 and 21, 1993, when it ceased employing electricians at the Amoco jobsite.

Brown received Daugherty's June 3 letter on Saturday, June 5. On Monday, June 7, he called Daugherty and asked whether he could come by and pick up working credentials to go to work. Daugherty said that this was not necessary and that the credentials would be waiting for him on the job.

Brown reported to work on Tuesday, June 8, and, although he was permitted to work, there was no working permit waiting for him on the job. He never received a new working credential for June 1993. Brown worked the rest of that

that of Daugherty and Shudovske, but also because of the reasons I have stated above in rejecting their testimony on a related issue.

<sup>4</sup>On this and other conversations between Brown and Daugherty, I have credited Brown's testimony over that of Daugherty for reasons that I have already stated. Brown's account of other disputed conversations proved credible and Daugherty's account proved unreliable.

week. He and only two other travelers were at the worksite and they worked separately from the "local men." During that week Brown was harassed by members of Respondent for working and he approached Schutkovske to deny rumors that he was suing Respondent over his refusal to quit. He also asked to speak to Daugherty about the rumors. He did meet Daugherty at a local restaurant on Saturday night, June 12. Brown complained about his treatment on the job. Daugherty simply told Brown that he did not need working credentials to work contrary to Brown's understanding. The conversation ended when Daugherty said that he could not say anything more while the Board litigation was still pending.

On Tuesday, June 15, Len Czerwinski, a foreman for the Employer and a member of Respondent's executive board, approached Brown and told him he was disappointed that Brown was still on the job because local men were "on the bench." Czerwinski said that he was going to recommend Brown for membership in the Respondent, something Brown had been trying to obtain for some time, but that he would not do so because of Brown's actions in returning to work. He also said that he would make sure that Brown would not gain membership in Respondent. This is based on Brown's uncontradicted testimony because Czerwinski did not testify in this case.

The next day, June 16, the Employer discharged Brown about 9 a.m. Foreman Rick Paulson, who was also a member of Respondent, handed Brown a termination slip and a check. The slip, which was apparently completed and signed by Suchanuk, said that Brown was terminated for lack of production and because he required constant supervision. Brown credibly testified that no one from the Employer had ever warned him, disciplined him, or even talked to him about problems in this respect before his termination. Indeed, Paulson said nothing to Brown about the reasons for the termination when he handed the slip to Brown.<sup>5</sup>

Later that day, after he got home, an official of the Employer called Brown and told him that the discharge would be changed to a reduction in force. Brown later received a copy of the reduction-in-force notice by certified mail. He used it to obtain unemployment benefits.<sup>6</sup>

<sup>5</sup>I reject Paulson's testimony about Brown's alleged poor work performance. His testimony was completely unreliable. It was a product of his obvious bias in favor of Respondent. It was also essentially refuted by the testimony of Russ Hilton, Respondent's assistant business manager, who expressed disbelief that Brown had been discharged for the reasons stated on the termination slip and was willing to go to bat for Brown to rescind the discharge.

<sup>6</sup>The next day, Brown received a call from Assistant Business Manager Russ Hilton, who said he was going to grieve the discharge. Brown told him that it had already been changed to a reduction in force. I reject any suggestion in Hilton's testimony that the discharge was changed to a layoff because of his intervention. He testified that he received a copy of the original Brown termination notice that contained a handwritten change to layoff by an official of the Employer. It is clear, however, that Brown actually received a new termination notice specifying that he was laid off; this contained no handwritten notation. It is also obvious that at the hearing Hilton was confused when trying to identify which of the three separate exhibits representing Brown's termination he had received or seen. He also once mistakenly identified Daugherty as having changed the discharge to a layoff. I have little confidence in his testimony on this point.

## B. Discussion and Analysis

The evidence clearly shows a pattern by Respondent of coercive attempts to get travelers to abandon their existing jobs at the Amoco site because they were not members of Respondent and a large number of local members were out of work. This pattern of conduct included requests and suggestions that travelers quit their jobs, volunteer for layoffs, and submit vacation requests to their employer. In addition to a suggestion by Executive Board Member Czerwinski that union membership turned on one traveler's acquiescence to such requests and suggestions,<sup>7</sup> the Respondent's coercive efforts were highlighted by its manipulation of so-called working credentials or permits that were issued to travelers. Respondent thus created the impression that working credentials were required of travelers who used its exclusive hiring hall to obtain and keep jobs. Those working credentials were issued to travelers and renewed monthly by Respondent throughout the duration of the Amoco job until such time as Respondent started suggesting that travelers quit or request layoffs. Respondent concedes that its use of working permits generally was and is unlawful (Br. 9, 43). Respondent also utilized, however, the sudden, well-timed, and unexplained failure to renew such permits to coerce travelers into leaving the Amoco jobsite. The proof of the intimidating effect of Respondent's conduct was its success in keeping travelers away from their jobs and its treatment of Brown, who tried to defy Respondent. This pattern of coercive conduct was thus clearly violative of Section 8(b)(1)(A) of the Act. See *Sachs Electric Co.*, 248 NLRB 669, 670 (1980), *enfd.* in pertinent part sub nom. *NLRB v. Electrical Workers IBEW Local 453*, 668 F.2d 991 (8th Cir. 1982).<sup>8</sup>

The motivation for Respondent's dealings with the travelers in late May and early June 1993 is clear on this record. It wanted the travelers to leave the Amoco jobsite because they were not members of Respondent and because members were out of work. Respondent concedes as much when it states in its brief (Br. 39-40) that "[i]t would be a sad commentary . . . that Local 697 now be found in violation of the law when the Union did, in fact, come into compliance with the Act by eliminating the unlawful working credential and Daugherty defeated his political opponents who fought against the Union's efforts to comply with the law." This rather reinforces my view of the matter. Daugherty did not tell any of the travelers that he was eliminating the working

<sup>7</sup>Respondent denies that Czerwinski was its agent because he was a lame duck executive board member who would leave his position the month after his coercive remark to Brown. It is clear, however, that Czerwinski's existing position made him an agent of Respondent, both actual and apparent. Not only did Respondent hold him out as an agent, but he was perceived as such by people such as Brown who dealt with him. Indeed, Respondent's bylaws make plain that the executive board has responsibilities in investigating membership applications and "traveling cards," the very subjects that Czerwinski raised with Brown.

<sup>8</sup>The evidence of coercion in this case is far greater than that which is also present here and which alone supported the violation in *Sachs*. In that case, the Board took cognizance of the practice of other locals of this International in requesting that travelers quit their employment. It also emphasized that coercion is implicit when requests of this sort come from union officials "who control and will continue to control, the travelers' livelihoods within the hiring hall's jurisdiction."

credentials because he had been told they were unlawful. He did not even mention this alleged reason when instructing Schutkovske to transmit the information to the travelers. He failed to give any reason for the nonrenewal of the credentials, thus leaving the impression that the travelers would go to work without them at their peril. Moreover, the context of the internal union election campaign, with its emphasis on local members being out of work while travelers were working, explains the Respondent's pattern of conduct in this case. Respondent's motivation and, indeed, its use of coercion to effectuate its intent is made manifest by its treatment of Brown, who had the temerity to defy Respondent and return to work.

It is also clear that Respondent's coercive pattern of conduct led or might reasonably be thought to lead to contacts with the Employer to effectuate the desired quits or layoffs. This is particularly so here because several of the Employer's foremen were members of Respondent. Indeed, there were actual contacts in this case. For example, Respondent suggested that travelers submit vacation request forms to the Employer. They did so, submitting them first to the union steward who then forwarded them to the Employer. Thus, Respondent also caused or attempted to cause terminations in violation of Section 8(b)(2) and (1)(A) of the Act. See *Iron Workers Local 111 (Steel Builders)*, 274 NLRB 742, 747 (1985), enfd. in relevant part 792 F.2d 241, 245 (D.C. Cir. 1986).

Respondent's defense on this aspect of the case is two-fold: that Respondent's officials told the travelers that they could go to work and that the travelers voluntarily left their jobs on principle. I reject this defense. It rests basically on discredited and unreliable testimony. Brown and Nelson credibly testified that they and other travelers did not return to work because Respondent did not renew their work credentials. Nor is the *Sachs* case distinguishable because Daugherty grudgingly told travelers that they could go back to work. Actually, the sudden and unexplained failure to renew work credentials makes this case even stronger than *Sachs* and it negates the pretextual reference to travelers being able to return to work. As I have earlier found and stated the real message transmitted to the travelers was that they should leave their jobs and the context of coercion in this case established the violation. Moreover, Czerwinski's statement to Brown after he tried to return to work is most revealing. It contained a separate coercive element, the denial of membership, and no suggestion that Brown could or should stay on the job. This refutes any notion that the travelers were freely volunteering to quit.

I now turn to Respondent's treatment of Brown after he returned to work, which is separately alleged as a violation of Section 8(b)(2) and (1)(A) of the Act. The evidence on this aspect of the case supports the inference, which I make, that Respondent caused or attempted to cause the discharge of Brown because he was a nonmember of Respondent who defied Respondent's wishes by returning to work. The strongest evidence in support of this inference is Respondent's unlawful pattern of conduct seeking the termination of the Employer's travelers, discussed above. Its efforts were successful in preventing all but three travelers from returning to the Amoco jobsite. One of those who did return was Brown, who had conversations with Daugherty over his return to work, his treatment by members after he returned,

and his filing of a charge against Respondent for trying to get the travelers to leave the job in the first place. Brown was also coercively implored by Czerwinski, who was not only an agent of Respondent but a foreman of the Employer, to leave the job under penalty of losing his chance at union membership. The next day Brown was discharged for an obviously pretextual reason. The timing of the discharge and its pretextual nature support the finding that it was unlawfully motivated. The circumstances of the discharge also support the finding that Respondent, whose motivation was the only operative motivation that appears in this record, caused the discharge. No one else, certainly not the Employer, was seeking Brown's termination. Accordingly, I find that the General Counsel has proved by a preponderance of the evidence that Respondent caused or attempted to cause Brown's discharge in violation of Section 8(b)(2) and (1)(A) of the Act. See *Fischbach/Lord Electric Co.*, 270 NLRB 856, 880-881 (1984), enfd. in pertinent part sub nom. *NLRB v. Electrical Workers IBEW Local 112*, 827 F.2d 530 (9th Cir. 1987).<sup>9</sup>

#### CONCLUSIONS OF LAW

1. By engaging in threats and other coercive conduct requesting and suggesting that nonmember travelers quit, seek layoff, or otherwise terminate their employment, Respondent violated Section 8(b)(1)(A) of the Act.

2. By attempting to cause and causing the Employer to lay off or terminate nonmember travelers, including Lawrence Brown, because of their nonmembership in Respondent, Respondent has violated Section 8(b)(2) and (1)(A) of the Act.

3. The above violations are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that Respondent engaged in certain unfair labor practices, I shall recommend that it be required to cease and desist therefrom, and to take certain affirmative action necessary to effectuate the policies of the Act.

I will also recommend that Respondent make whole Lawrence Brown and the other travelers who worked for the Employer at the Amoco jobsite in Whiting, Indiana, for any loss of earnings and other benefits they may have suffered as a result of the unlawful action taken against them, in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed under *New Horizons for the Retarded*, 283 NLRB 1173 (1987).<sup>10</sup>

<sup>9</sup>I do not view Daugherty's June 3 letter as negating Respondent's contrary expressions that travelers should not report to work. As I have already stated, Respondent gave lip service to the travelers' right to work, but used its considerable coercive power to emphasize that they should not return to work. Nor do I view the letter as having repudiated the earlier unlawful conduct which, in any event, was repeated after the letter was sent by Czerwinski's statement and Respondent's role in the discharge of Brown. See *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978).

<sup>10</sup>Since the job ended and everyone would have been laid off on June 21, 1993, there is no need for other remedies with respect to the further employment of travelers. Nor does the General Counsel request any other remedies. I recognize that when Respondent's unfair labor practices were committed the job was winding down. Any

*Continued*

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended<sup>11</sup>

### ORDER

The Respondent, Local Union No. 697, International Brotherhood of Electrical Workers, Whiting, Indiana, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Engaging in threats or other coercive conduct requesting and suggesting that nonmembers, including travelers from other locals of the IBEW, quit, seek layoff, or otherwise terminate their employment.

(b) Attempting to cause and causing the layoff or termination of nonmembers, including travelers from other locals of the IBEW, because they are nonmembers.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make Lawrence E. Brown and other nonmembers, including travelers from other locals of the IBEW, who worked for the Employer at the Amoco jobsite in Whiting, Indiana, whole for any loss of earnings and other benefits suffered as a result of the unlawful action taken against them, in accordance with the remedy section of this decision.

(b) Post at its business office or offices copies of the attached notice marked "Appendix."<sup>12</sup> Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this order what steps the Respondent has taken to comply.

problems occasioned by this circumstance can be resolved at the compliance phase of this proceeding.

<sup>11</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>12</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

### APPENDIX

#### NOTICE TO MEMBERS

#### POSTED BY ORDER OF THE

#### NATIONAL LABOR RELATIONS BOARD

#### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

The National Labor Relations Act gives employees these rights.

To engage in self-organization

To form, join, or assist labor organizations

To bargain collectively through representatives of their own choosing

To act together for collective-bargaining or other mutual aid or protection

To refrain from any or all of these things.

WE WILL NOT engage in threats or other coercive conduct requesting and suggesting that nonmembers, including travelers from other locals of the IBEW, quit, seek layoff, or otherwise terminate their employment.

WE WILL NOT attempt to cause or cause the layoff or termination of nonmembers, including travelers from other locals of the IBEW, because they are nonmembers.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them under the Act.

WE WILL make Lawrence E. Brown and other nonmembers, including travelers from other locals of the IBEW, who worked for UE & C Catalytic, Inc. at the Amoco jobsite in Whiting, Indiana, whole for any loss of earnings and other benefits suffered as a result of the unlawful action taken against them, with interest.

LOCAL UNION NO. 697, INTERNATIONAL  
BROTHERHOOD OF ELECTRICAL WORKERS